

Patricia Hollenbeck (SBN 121765)
Rebecca G. Church (SBN 259652)
DUANE MORRIS LLP
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: (619) 744-2200
Facsimile: (619) 744-2201
E-mail: phollenbeck@duanemorris.com
rchurch@duanemorris.com

Attorneys for Defendants
ROBERT ELMBURG and ROCKY FLICK

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL MONTGOMERY,
Plaintiff

V.

WAL-MART STORES, INC.;
KINDERHOOK INDUSTRIES II, L.P.;
KINDERHOOK INDUSTRIES, L.L.C.;
KINDERHOOK CAPITAL FUND II, L.P.;
CRESTWOOD HOLDINGS, INC.;
BERGAN, L.L.C.; JOHN ELMBURG;
ROBERT ELMBURG; ERIC ELMBURG;
ROCKY FLICK; HOME DEPOT U.S.A.,
INC.; DOES 1 through 20 inclusive.

Defendants.

Case No.: 12CV3057 L (WVG)

**DEFENDANT ROCKY FLICK'S
NOTICE OF MOTION AND
MOTION TO DISMISS FOR
LACK OF PERSONAL
JURISDICTION (12(B)(2)), LACK
OF STANDING (12(B)(1)),
FAILURE TO STATE A CLAIM
(12(B)(6)) AND MOTION TO
STRIKE (12(F))**

Date: April 2, 2013
Time: 10:30 a.m.
Ctrm: 5B
Judge: Hon. M. James Lorenz

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 2, 2013, at 10:30 a.m., or as soon thereafter as this matter may be heard, in Courtroom 5B of the above Court, Defendant ROCKY FLICK ("Flick") will and hereby does move the Court for an order dismissing the claims against him in the above styled action pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction, Fed. R. Civ. P. 12(b)(1) for lack of standing, pursuant to 12(b)(6) for failure to state a claim, and for

1 an order striking Plaintiff's claim for punitive damages and for attorneys' fees and
2 costs pursuant to Fed. R. Civ. P. 12(f).

3 Flick's motion is based upon this Notice and Motion and the accompanying
4 Memorandum of Points and Authorities, the Declaration of Rocky Flick and the
5 pleadings and other papers on file with the Court.

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7 Dated: February 26, 2013

DUANE MORRIS LLP

8 By: /s/ Patricia Hollenbeck
9 Patricia P. Hollenbeck
10 Rebecca G. Church
11 Attorneys for ROBERT ELMBURG and
ROCKY FLICK

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